

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 235 of 2006

SAMPAT KUMAR
V/S
MANGI LAL

Mr. SANDEEP SARUPARIA, for the appellant / petitioner

Mr. SAJJAN SINGH, for the respondent

Date of Order : 22.8.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant. Perused the impugned judgments.

Both the learned Courts below have rightly found the plaintiff to be having reasonable and bonafide necessity of the suit shop, and have rightly decided the issue of comparative hardship and partial eviction. It was suggested that the plaintiff has alternative accommodation, which was got vacated from Jagdish, and in that accommodation, the appellant can be accommodated, to which the Courts below have found that, that accommodation is now being used as kitchen, which finding is again a finding of fact, and is not shown to be vitiated on any of the grounds available under Section 100 CPC.

Thus, the appeal does not involve any substantial question of law. The same is, therefore, dismissed summarily.

At the request of the learned counsel for the appellant, the appellant is given one year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA), J.

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